

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

CHRISTOPHER ERIC SHOEMAKE,)
)
)
Movant,)
)
)
v.) No. 1:15CV139 SNLJ
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent,)

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. Plaintiff moved for § 2255 relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015), in which the Court held that the residual clause of the Armed Career Criminal Act (ACCA) was void for vagueness under the Due Process Clause. Movant was sentenced as a Career Offender under Chapter Four of the Guidelines, not under the ACCA. Therefore, the Court dismissed his motion because vagueness challenges have never been allowed against the Guidelines. *See United States v. Wivell*, 893 F.2d 156, 160 (8th Cir. 1990) (“the limitations the Guidelines place on a judge’s discretion cannot violate a defendant’s right to due process by reason of being vague.”).

The Court of Appeals for the Eighth Circuit has cast the holding of *Wivell* into doubt. In *United States v. Thomas*, No. 14-2635 (8th Cir. Oct. 9, 2015), the majority implied that the Guidelines proscribe conduct in the way that statutes do and are thus subject to due process challenges. *Id.* at 3. The dissent, however, suggested that any challenge to circuit precedent “be directed to the full court in a suggestion for *en banc* review.” *Id.* at 5 (Colloton, J.).

Because this Court’s judgment is not yet final, the Court finds it judicious to reopen this case and to hold it in abeyance pending the finality of the decision in *Thomas*.

Accordingly,

IT IS HEREBY ORDERED that the Court's Orders dated September 28, 2015, are **VACATED**.

IT IS FURTHER ORDERED that the Clerk is directed to place this case on the open docket.

IT IS FURTHER ORDERED that this case is held in **ABEYANCE** until further notice from the Court.

Dated this 9th day of October, 2015.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE